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Pursuant to Act No. 312,
Public Acts of 1969,
State of Michigan

DATE OF AWARD:
October 27, 1970

10/27/70

GWA

Novi,
City of

I. AWARD OF ARBITRATION PANEL

II. OPINION OF CHAIRMAN

ARBITRATION

between

City of Novi, Michigan

- and -

Novi Police Officers Association

Hearings held September 1 and 9, 1970
Wayne State University
Detroit, Michigan

Panel of Arbitration

Mayor Joseph Crupi
(appointed by City)

Arnold J. Shifman, Esq.
(appointed by Association)

Mark L. Kahn
Chairman

Appearances

For the City of Novi:

Charles J. Long, Esq., Pontiac, Michigan
Donald C. Young, Jr., Councilman, City of Novi

For the Novi Police Officers Association:

Harvey I. Wax, Esq., Detroit, Michigan
Gordon Nelson, President, NPOA
Robert Starnes, Corporal, Novi Police Department
Elmo R. Earles, Bankers Life of Nebraska

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In the Matter of an

ARBITRATION

between

City of Novi, Michigan

and

Novi Police Officers Association

Award of Arbitration Panel

1. Wages. Appendix A of the 1969-70 Agreement between the parties is hereby amended to read as follows:

The basic rates of compensation for bargaining unit members, effective July 1, 1970, are as follows:

	<u>Annual</u>
Patrolman - Start	\$8,400
- After six months	8,800
- After one year	9,200
- After two years	9,850
- After three years	10,500
Corporal	10,800
Detective Corporal	10,900
K-9 Officer - Over base salary	400

2. Pension. The parties are directed to proceed expeditiously with negotiations to effectuate the adoption of a Pension Plan effective as of July 1, 1970, and requiring City and employee contributions equal to those that would be required under the State MERS Plans. Pending the adoption of a Novi Employees' Pension Plan, City and employee contributions from July 1, 1970, forward are to be placed in escrow by the City and held in escrow for the exclusive purpose of placement in the Pension Fund to be established under the Pension Plan.

3. Shift Premium. The NPOA proposal for a shift premium is denied.

4. Longevity Pay. The City is directed to increase basic rates of compensation as follows: by two (2) percent after five (5) years of service; by four (4) percent after ten (10) years of service; and by six (6) percent after fifteen (15) years of service.

5. Cost of Living Allowance. This NPOA proposal is denied.

6. Mileage Reimbursement for Use of Personal Car on City Business.

The NPOA proposal to increase the reimbursement rate from the present ten (10) cents per mile to twelve (12) cents per mile is denied. The City is directed to establish procedures that will assure prompt reimbursement at ten (10) cents per mile for all use of personal cars in connection with assigned duties.

7. Vacations. The NPOA proposal for fifteen (15) vacation days after six (6) years of service is approved. Article XVIII of the 1969-70 Agreement is to be revised accordingly, and is to provide that after five (5) years of service employees will earn one and one-fourth (1-1/4) days of vacation per month up to a maximum of fifteen days per year. There is to be no change in the vacation provision in regard to employees with less than six (6) years of service.

8. Life Insurance. Article XVII of the 1969-70 Agreement is hereby amended to read as follows in the 1970-71 Agreement:

face amount

The City shall provide, at its expense, life insurance in the/ of \$20,000 (twenty thousand dollars) for each represented employee with double indemnity provisions.

9. Uniform Allowance. Article XX of the 1969-70 Agreement shall be revised to read as follows:

Each employee will receive an annual cash allowance of two hundred dollars (\$200.00) toward the purchase and upkeep of his uniforms (or, in the case of non-uniformed personnel, his clothing). This allowance shall be paid semi-annually: \$100.00 on or about each April 1, and \$100.00 on or about each October 1. Employees are obligated to satisfy appropriate appearance standards, but are not obligated to purchase uniforms or clothing at stores designated by the City.

Each newly hired employee will be given a \$100.00 cash uniform allowance when hired. Upon the next April 1 or October 1, whichever comes first, he will be paid that proportion of \$100.00 which his period of service up to that time represents as a fraction of six months. Example: a patrolman hired on March 1 gets \$100.00 on March 1; \$16.67 (one-sixth of \$100.00) on April 1; and then \$100.00 on each succeeding October 1 and April 1. In addition, each new employee will be given a cash payment of \$50.00 as an extra, non-recurring uniform allowance upon acquiring seniority after six months of service.

10. Association Business Leave Days. The NPOA proposal that the City grant ten man-days of leave with pay each year to Association officers and representatives for official Association business is denied.

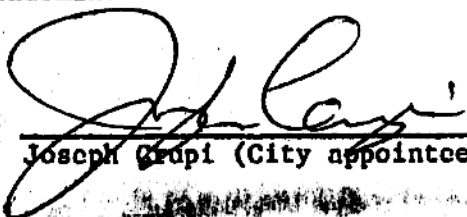
11. Rate of Pay for Police Women - Clerical. This NPOA proposal is approved on the following basis:


Any female clerical employee of the Police Department shall be paid at the hourly rate equivalent of the starting patrolman's annual salary rate (\$8,500.00 divided by 2,080 during 1970-71) for each hour or portion thereof spent on duties involving and related to searching and guarding female prisoners.

12. Rate of Pay for Various Specialist Classifications. This proposal of the NPOA is denied. The City is directed, however, to implement Article XV, OVERTIME, of the Agreement on the basis that no employee is obligated to work in excess of eight (8) hours per day unless he is authorized and assigned to do so and is paid for such additional hours at the overtime rate of time and one-half.

NOTE: All of the above items in the Award which amend or supplement the 1969-70 Agreement are effective as of July 1, 1970, and become a part of the 1970-71 Agreement between the parties which is to be effective from July 1, 1970, to June 30, 1971, inclusive. In all aspects not affected by this Award, the provisions of the 1969-70 Agreement are to be retained unchanged in the 1970-71 Agreement.

13 (Additional Manpower), 14 (Creation of a Traffic Bureau Making Use of State Funds) and 15 (Purchase of Additional Cars) -- all proposals of the Association -- are hereby denied on the basis of the considerations expressed in the Opinion of the Chairman.


Joseph Grapi (City appointee)


Arnold J. Shifman (NPOA appointee)*


Mark L. Kahn, Chairman

DATED: October 27, 1970

*Dissenting on Item 1 (Wages).

OPINION OF CHAIRMAN

This arbitration is between the City of Novi, Michigan, and the Novi Police Officers Association (NPOA). It takes place pursuant to the Police and Fire Fighters Arbitration Act -- Act No. 312, Public Acts of 1969, State of Michigan -- and involves fifteen unresolved issues relating to the 1970-71 Agreement between the parties. Both parties are agreed that the Award of the Arbitration Panel is to be effective as of July 1, 1970, and that their 1970-71 Agreement (including that portion of its content that is determined by the Panel's Award) will remain in effect through June 30, 1971.

Section 3 of the Act provides that either party may initiate binding arbitration proceedings after they have failed to reach agreement in the course of mediation. Under Section 4, each party is to choose a delegate who will serve as a member of the three-man Panel of Arbitration. The City named its mayor, the Hon. Joseph Crupi. The NPOA designated Mr. Robert Starnes, its past president and a Corporal in the Novi Police Department. Subsequently, in accordance with Section 5, Attorney Harvey I. Wax (on behalf of Mr. Starnes) on July 16, 1970, requested the Chairman of the Michigan Employment Relations Commission to name the arbitrator who would serve as third member and Chairman of the Panel.

On July 20, 1970, the undersigned was appointed by the Chairman of the Michigan Employment Relations Commission to serve as Panel Chairman. On August 24, 1970, the NPOA designated Mr. Arnold J. Shifman, Chief Assistant Prosecutor for Oakland County, to replace Mr. Starnes as its delegate on the Arbitration Panel. Hearings were conducted by the Arbitration Panel on September 1 and 9, 1970.¹

Each party had a full opportunity, during these hearings, to present evidence and argument on behalf of its position in regard to each of the fifteen issues in dispute. Both parties stipulated that the Panel was properly

1. The hearings could not begin before September 1, 1970, because of the possible lack of availability of Mr. Starnes to serve as a Panel member during the hearings and the anticipated subsequent executive sessions of the Panel. Both parties waived any objection to the September 1, 1970, date of the first hearing.

constituted under the Act (Tr., pp. 23-34). Neither party desired to file a post-hearing statement.

Executive sessions of the Arbitration Panel took place on September 28 and October 8, 1970. Subsequently, a draft of the Panel's Award and the Chairman's Opinion was sent to Mr. Crupi and to Mr. Shifman by the Chairman for their suggestions and criticisms. The Chairman acknowledges the benefit he has derived from the insights and views of his Panel colleagues. It should be emphasized, however, that the content of this Opinion remains solely the responsibility of the Chairman.

This Opinion will now consider the substance of each issue in the order of original listing (which corresponds to their listing in the foregoing Award of the Panel). The analysis and the conclusions of the Chairman as to each issue, and in regard to the "package" of the Award as a whole, derive from the entire record of this case as presented by the parties and as thoroughly discussed in executive session by the Arbitration Panel. It would have delayed unreasonably the issuance of the Panel's Award and the Opinion of the Chairman to have recapitulated in detail all of the evidence and argument in the record, and the parties should understand that any brevity of treatment in this Opinion does not connote brevity of consideration of the issues presented to the Panel for decision.

1. WAGES

The City of Novi, in Oakland County, embraces an area of 32 square miles. The center of the City lies close to Interstate-94, about eleven miles WNW of the northwest corner of the City of Detroit. Adjacent communities include the City of Northville and Northville to the south; Livonia to the southeast; Farmington Township to the east; Walled Lake on its north; and Wixom to the northwest. Previously a village, Novi became a City in February 1969 by a vote of its citizens, thereby placing into effect a City charter recommended on November 26, 1968, by a Charter Commission created on May 20, 1968. The City's population, according to the 1970 census, was about 9,500.

Apart from the Chief of Police and a detective-sergeant -- not in this bargaining unit -- the City's police force during the 1969-70 fiscal year consisted of nine men, seven of whom had been previously employed by the Village of Novi. Their approximate length of service as of July 1, 1970, to

the nearest whole year, was as follows:

<u>Years of Service</u>	<u>Number on Force</u>
0	0
1	2
2	3
3	1
4	3
Total. . .9	

The first collective bargaining Agreement was negotiated by the parties effective as of July 1, 1969, and terminating on June 30, 1970. Prior to fiscal 1969-70, the salary scale for Patrolmen provided \$6,400 as the starting salary and an increase to \$7,100 after one year. The 1969-70 City-NPOA Agreement, their first contract, stipulated a starting salary of \$7,500 with a top of \$9,100 after three years of service (see Table A on next page for additional detail). This Panel of Arbitration must determine the salary schedule for 1970-71.

In spite of the substantial pay improvement negotiated last year, it is clear from the data presented to the Panel that the 1969-70 salary level of the Novi police force was still substantially below the prevailing level of pay for policemen in the region. This conclusion does not imply that rates of pay for policemen (at any given length of service) should ideally be identical. Differences in other types of compensation, labor market considerations, various aspects of exposure to hazards, and working conditions, do in fact tend to create pay differentials among police forces that may reflect the net advantages and disadvantages of employment in any particular police department. Bearing all this in mind, however, the record before the Panel has convinced its Chairman that the Novi police bargaining unit is entitled to a salary improvement for 1970-71 that will achieve a significant reduction in the extent to which the Novi police pay scale is sub-standard.

It should be emphasized that there is no definitive basis for establishing an appropriate salary adjustment, definitive in the sense that all concerned, or even other "objective" persons, would accept the criteria (and their respective weights) on which the adjustment should be based. The judgment

of the Chairman, which has been reached in accordance with the factors listed in Section 9 of the Act, is set forth in the 1970-71 column for the City of Novi in the following table:

TABLE A

	CITY OF NOVI Basic Annual Salary		CITY OF DETROIT Basic Annual Salary		Annual Salary Rates Novi minus Detroit	
	1969-70	1970-71	1969-70	1970-71	1969-70	1970-71
Patrolman						
At Start	\$7,500	\$8,400 +900 12.0%	\$8,000	\$8,480 +480 6.0%	- 500	- 20
At 6 months	7,800	8,800 +1,000 12.8%	- -	- -	- 200	+ 320
At 1 year	8,100	9,200 +1,100 13.6%	8,700	9,222 +522 6.0%	- 600	- 22
At 2 years	8,600	9,850 +1,250 14.5%	9,400	9,964 +564 6.0%	- 800	- 114
At 3 years	9,100	10,500 +1,400 15.4%	10,100	10,706 +606 6.0%	-1,000	- 206
At 4 years	- -	- -	10,800	12,000 +1,200 11.1%	-1,700	-1,500

The comparison with Detroit police pay levels and changes is offered only as an example. What happened in Detroit (with its police force of more than 3,500) did not determine the Chairman's conclusions in regard to Novi's nine-man police force, but the reduction in the pay differential between Novi and Detroit is illustrated in the last two columns.

Of greater relevance is the prevailing pattern of pay increases among other communities in the region, as well as the levels of pay in effect for 1970-71. All of the data supplied to the Panel have been carefully assessed in this regard. As of the dates of the hearings, of course, not all police pay rates for 1970-71 had been determined. Information collected by the Michigan Municipal League for its Area #1 (the "Detroit Metropolitan Area, extending outward to Mt. Clemens, Pontiac, Ann Arbor and Flat Rock"), for example, included comparative information for seventeen communities ranging

in population between 4,000 and 50,000.¹

Nine of these seventeen communities increased the top patrolman rate from \$954 to \$1,100; four granted smaller increases (ranging from \$600 to \$850); two provided increases of \$1,200; and two others granted increases in excess of \$1,200. The largest recorded increase, \$1,869, was at Southgate, raising the maximum there to \$10,669. Of these seventeen communities, the 1970-71 patrolman maximum ranges from \$11,000 to \$11,500 in eleven. Six pay from \$10,000 to \$10,777. Only two are paying more than \$11,500.

The top step Novi increase of \$1,400 under the foregoing Award pulls the top-step Novi policemen toward a more suitable relationship to other police forces in the region, and appropriate relative increases have been provided for patrolmen with less than three years of service. The same dollar differential has been retained between the top patrolman's rate and the annual basic salary of the detective corporal and the corporal.

The improvements in the Novi police pay scale also represent a substantial improvement in real income. Consumer prices in the Detroit Metropolitan Area increased by 6.2 percent from July 1969 to July 1970. As Table A shows, the pay increases range from 12.0 to 15.4 percent. In addition, as will be discussed later in this Opinion, other important improvements have been granted: immediately in the form of greater life insurance and uniform allowance, potentially by way of pensions, longevity pay and improved vacation benefits.

These improvements in compensation and fringe benefits are within the "ability to pay" of the City for its present police force. / It is also clear that Novi's Police Department is undermanned and underequipped -- factors which make for less desirable and more hazardous working conditions -- and that constraints on the City's financial resources will impinge upon its ability to expand the police force to a level that will provide the citizens of Novi with adequate police protection. We will return to the topic of "ability to pay" in connection with our discussion of Items 13, 14 and 15 at the end of this Opinion.

1. Salary rate data as of January 1970 appear in the Michigan Municipal League's Information Bulletin No. 109 (revised), 1970 Salaries, Wages and Fringe Benefits in Michigan Municipalities over 4,000 Population, p. 32 (Panel Exhibit A); and salary rate data effective to June 30, 1971, as of as of July 1970 (unverified) appear in the League's July 1970 Supplement to the previous reference (Panel Exhibit B).

2. Pensions

Article XIII of the 1969-70 Agreement, "Retirement", stated:

The Employer agrees that during the term of this agreement it will undertake a study of retirement plans to provide retirement benefits for members of the bargaining unit to become effective as soon as possible.

This commitment, unfortunately, has not yet resulted in the establishment of a pension program, although both parties are in substantial agreement on a plan similar to the State MERS plan. Item 2 of the Award is designed to expedite the creation of a retirement system and to ensure that its benefits will be appropriately funded from July 1, 1970, by the placement of monies intended for the pension fund into escrow for this exclusive purpose.

3. Shift Premium

Because bargaining unit personnel presently work on the basis of rotating shifts, it seemed preferable to incorporate the funds that shift differentials would require directly into the improvement of the salary schedule. This judgment is not intended to prejudice any adjustment to a future situation, if it occurs, where some personnel are required to work exclusively during less desirable hours.

4. Longevity Pay

Longevity pay increments for longer service employees constitute a widespread practice among Michigan police departments. Introduction of longevity pay at Novi will serve as a concrete deterrent to personnel turnover, enhance career income expectations, and recognize concretely the fact that additional experience is a valuable asset in police work. There is much diversity among the longevity pay provisions for policemen in Michigan. The specific longevity pay formula set forth in the Award is compatible with prevailing practices and coincides with the NPOA proposal for employees with five, ten and fifteen years of service, respectively. Since no present employee will complete five years of service until May 25, 1971, this decision involves no significant cost to the City during the 1970-71 fiscal year. It does not seem useful to have longevity pay of one percent after two years of service, as urged by the NPOA, because of the substantial pay improvement in the basic salary schedule after two and after three years

of service. And it is the Chairman's opinion that the advisability of additional longevity pay after twenty or more years of service should be left for future consideration by the parties. Longevity pay on a percentage basis, rather than a fixed dollar amount, should hopefully remove the size of longevity pay from being a regular item of contention between the parties and constitutes a more equitable basis of recognizing length of service over long periods of time.

5. Cost of Living Allowance

The Chairman has voted not to grant the NPOA proposal for cost of living adjustments during the life of the 1970-71 Agreement, primarily on the basis of the following considerations: (a) the salary improvements effective July 1, 1970, are substantially above the increase of 6.2 percent in the Detroit Consumer Price Index from July 1969 to July 1970; (b) the current NPOA-City Agreement is for only one fiscal year; and (c) such provisions are apparently rare in Michigan Police Departments. (The 1970 compilation of the Michigan Municipal League shows only ten municipalities in Michigan as providing such adjustments more frequently than on an annual basis, with no indication of whether or not these are applicable to their police departments.)

6. Mileage Reimbursement for Use of Personal Car on City Business

The NPOA has proposed an increase from ten cents to twelve cents per mile in the reimbursement rate for the use of one's personal car on City business. The Chairman has concluded that this increase should not be approved at this time. Of the 138 police departments surveyed in the 1970 compilation of the Michigan Municipal League, 104 paid ten cents. Only four paid more than ten cents. Twenty-nine paid less than ten cents. (Northville pays \$100 per month under circumstances not known to this Panel.) No evidence was presented by NPOA to justify a higher rate based on actual cost data.

The Award on this Item 6 recognizes the possibility that employees have not been systematically reimbursed for all uses of personal cars on business assigned by the City at the current rate of ten cents per mile, and it therefore directs the City to establish procedures to assure proper

reimbursement for all such uses.

7. Vacations

The Chairman has voted to approve the basic NPOA proposal that employees obtain fifteen vacation days per year after six years of service. This improvement is compatible with vacation practices in Michigan police departments and provides a desirable expectation for longer-service employees. It will impose no cost on the City during 1970-71, during which no present employee will have completed six years of service.

8. Life Insurance

Adequate life insurance protection is particularly desirable for those engaged in police work, and the value of such protection to a policeman's family is well worth the relatively modest cost. Accordingly, the Chairman supports the NPOA's proposal that each employee be provided by the City with life insurance of \$20,000 with double indemnity provisions. This quadrupling of the amount of life insurance will cost the City about \$76 more per employee per year.

9. Uniform Allowance

The evidence of record indicates that the annual uniform allowance of \$125 specified in the 1969-70 Agreement falls far short of covering the purchase and upkeep of uniforms (or of civilian clothing worn on duty by non-uniformed personnel). Undisputed testimony suggests that a first-year uniform outlay (including pistol) is likely to exceed \$250, and that the annual cost of dry cleaning alone may amount to \$125. Based on this information, and on available data in regard to uniform allowance practices in other Michigan police departments, an increase in the allowance at Novi to two hundred dollars per year seems appropriate. The Award is designed to provide partial reimbursement of the initial immediate outlay of a newly hired patrolman, and the extra \$50 upon attaining seniority after six months will offset to this extent the extra initial uniform expenditures that do not recur each year. The payment schedule in the Award is designed to permit the City the convenience of paying all employees their allowance on a semi-annual basis at the same times, except during the first year of employment of a new hire.

10. Association Business Leave Days

The Agreement already makes adequate provision for released time for Association representatives to "investigate and process grievances during working hours without loss of pay. . ." (Art. IV, Sec. 4) The Chairman is not persuaded that additional paid leave time for other Association business is desirable at this time, nor was evidence presented to show that such a practice exists at other police departments.

11. Rate of Pay for Police-Women - Clerical

To the extent that any female clerical employee of the Police Department is assigned to police work involving female prisoners, it seems appropriate that she be paid for such work at the hourly rate equivalent of the starting patrolman's annual salary. The Award so provides.

12. Specialist Rates

The NPOA's proposal that police officers who specialize on juvenile and narcotics problems be paid \$200 over base salary is predicated primarily on the contention that such specialties have obligated the spending of considerable time outside of normal duty hours by the police officers involved without additional compensation. It is the Chairman's judgement that this situation is best met directly by a rigorous application of Article XV of the Agreement, which prescribes payment at time and one-half for all hours of work in excess of eight hours in any one day. Accordingly, the Award rejects the NPOA proposal in favor of the effective use of Article XV.

13. Additional Manpower

14. Creation of a Traffic Bureau

15. Purchase of Additional Cars

The Chairman is convinced that a nine-man police force cannot provide the City of Novi with adequate around-the-clock protection, and it is also clear that the Department needs additional vehicles. It would also appear desirable to take steps to create a Traffic Bureau, especially if federal funds are available to subsidize this kind of development.

There is a critical need to increase the size of the Novi police force, which (given the population and area of Novi) is badly undermanned relative to other police departments in the area. Moreover, the lack of adequate manpower creates additional hazards for the present force, especially when only one man is available to deal with a dangerous situation. It appears to be commonplace that the man or men on duty must choose among multiple calls for police service.

Nevertheless, it is the Chairman's judgment -- apart from the legal question of whether the Arbitration Panel possesses authority to require the City to hire additional patrolmen or to purchase additional vehicles -- that the substance of these three Association proposals should not be mandated upon the City at this time. It does appear that the City's financial resources during 1970-71 will permit -- over and above the additional costs for present personnel contained in the Award -- an expansion in the size of the force and the acquisition of additional vehicles. National survey data show (in 1969) a suburban police-population ratio averaging about 1.7 police officers per 1,000 population. Novi's ratio is less than 1.0 per 1,000 population. We would urge the City to increase the Police Department's manpower by five or six patrolmen as soon as possible, along with the acquisition of equipment to insure the efficient use of the larger force.

Novi has one of the lowest -- if not the lowest -- operating millage rates in the region: 6.5 mills. Its City Charter permits the voters to increase this millage rate by 3.5 mills to a total of ten mills (for three-year periods). If the City cannot achieve the necessary improvements in its Police Department on a 6.5 mills basis, it has an obligation to confront its citizens with the imperative need for additional millage.

If the City should fail to take needed steps in the direction of expanding and better equipping its Police Department during 1970-71, the improvement in salaries and benefits prescribed in the Award will continue to be offset by the undesirable and hazardous working conditions associated with present deficiencies in manning and equipment. Such undesirable aspects

of employment in the Novi police force would be a relevant criterion in the determination of the extent of salary improvement that will be appropriate for 1971-72.

Mark L. Kahn
Mark L. Kahn
Chairman, Arbitration Panel

DATED: October 27, 1970

(The concurring Opinion of Joseph Crupi and the dissenting Opinion of Arnold J. Shifman appear below.)

ADDENDUM TO ARBITRATION PANEL REPORT - NOVI POLICE OFFICERS ASSOCIATION
AND CITY OF NOVI - October 27, 1970
BY JOSEPH CRUPI, REPRESENTING THE CITY OF NOVI

It is to be noted that I have fully agreed with this Award. However, I am forced to write this addendum to the Novi City-Novi Police Officers Association (NPOA) Award since the "ability to pay" issue was strongly argued by the attorney for NPOA and this Award not only skirted the issue, but also poses it as a threat to future contracts.

The Novi Police Officers Association (NPOA) placed considerable emphasis (19 pages of closing arguments) on what is now known as the Haber Report*. It appears, therefore, that the Haber principle relating to "ability to pay" will be used as an expanding precedent until legally challenged or set aside by other awards.

This precedent is clear in this NPOA case since the NPOA foreshortened negotiations on the basis of the Haber report to raise issue on several items which are normally management prerogatives and whose implementation depends on budget funding or "ability to pay". Therefore, NPOA, on the basis of the Haber report, hopefully attempted to achieve that which could not be done by means of negotiations. If it were not for the Haber pronouncements, the NPOA negotiations would probably not have gone to arbitration.

Prof. Haber used seven pages to justify authority over "the ability to pay" issue while disclaiming any responsibility or authority over how an award would be achieved if it went beyond the apparent ability to pay.

* Arbitration Panel Report -- between Detroit Police Officers Association Inc. and the City of Detroit. July 1, 1970 -- William Haber, Chairman.

Having ruled that the Panel had the right to make grants beyond the ability to pay and having made wage grants beyond the ability to pay, the DPOA Panel took heart and rejected other demands on the basis of inability to pay -- even though the demands were meritorious. This, to say the least, is inconsistent. It may well be that the next panel will not be so rational in its inconsistency.

Special emphasis was given to the coupling in Act 312 of "financial ability of the unit of government" with "interest and welfare of the public" in one statement. The reversal of the two clauses being that of Mr. Haber. Having placed emphasis on subparagraph (c), Section 9, the opinion continues --- "The Panel has done that (considered "financial -- welfare of the public" supra). Having taken into account the equities involved in the proposals, it cannot conclude that it is impotent and has no authority to make any award because it costs money".

It is submitted that Section 9, subparagraphs (a) through (h) are restrictions beyond which a Panel has no authority and that each restriction must be taken in context with the others and one restriction cannot be interpreted on its own face.

I do not question that an arbitration panel has jurisdiction on ability to pay since obviously it is part of the statute and invariably all awards involve additional money either direct or by way of benefits. I do, however, question the interpretation given by Haber and the exclusion of the first restriction of Section 9, subparagraph (a) - - "The lawful authority of the employer."

I suggest that the legislature had in mind "the (total) interest and welfare of the public" including all of the services rendered by a city and not merely the cost of a police department. It is further submitted that if "ability to pay" is not properly considered in an award, the award could go far beyond the "lawful authority" and affect "the interest and welfare of the people".

To substantiate my interpretation of the legislative intent, let me point out that it is axiomatic at law that one cannot do indirect or by subterfuge what he cannot do direct. The state legislature recognized this by including the restriction "the lawful authority of the employer". It could not grant authority to an Arbitration Panel to go beyond the "lawful authority of the employer" because this would require changes in the fundamental and basic principle of self-government under the home rule city statutes.

If the legislature cannot, without other legislative action, modify "the lawful authority of the employer", it therefore follows that an Arbitration Panel cannot do otherwise. A Panel under present legislation must take into account "ability to pay" in the light of "lawful authority of the employer" and "the (total) interest and welfare of the public".

If an Arbitration Panel finds that "ability to pay" is not a valid defense, then the Panel must also assume the responsibility of finding the funds to implement its award. While city officials may be ingenious in utilizing and obtaining funds as mentioned by Haber, they cannot perform the miracles necessary to implement awards that go beyond the intent of the act without

exceeding their "lawful authority". Awards beyond "the ability to pay" will require budget funds reallocations with reduction in manpower, the most costly budget item, being the most apt to provide necessary funds.

This is exactly what happened in the Detroit Police case. That is, the City of Detroit had to reduce costs in other departments, including lay-offs, since it could not meet the police budget under the award and still keep the number of police in an already undermanned force. If a city could not squeeze the cost of the award from other departments, it must also have to reduce police manpower. This, therefore, is also an "interest and welfare of the public".

It is true that Mr. Haber was only involved with the police department. However, it can well be that other city personnel is equally unionized, or the total budget so tight-bound that "lawful authority" becomes paramount.

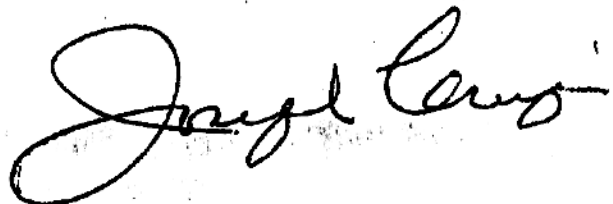
Mr. Haber and the Honorable Don Leonard argue that deficit spending or financial hardship should not be an estoppel to awards, and argue that there are always means of obtaining additional revenues. This is more easily said than done. May I point out the present situation in Hamtramck and its fiscal problems?

Judge Leonard stated in his testimony before the DPOA Panel, and Mr. Haber quoted therefrom: "A city would not suggest to a private contractor that they reduce the pay to employees performing work under the contract because the city is not in a financial position to pay the higher rate, nor would the city suggest that discounts be provided for commodities to be purchased

by the city on the ground that the city could not meet a fairly established price". I agree with this premise. However, is it not equally valid for the city to say -- like any good housewife -- "I have only so much money; therefore, I shall purchase only that which I can afford."

In summary, the present Act 312 calls for binding arbitration. An Arbitration Panel, therefore, must make its awards on "ability to pay" only when it is clear that the ability is available. This is not to say that increases in extreme cases should not be granted even if the award requires additional monies and/or reduction of personnel, providing a Panel acknowledges that the monies or the reduction of personnel will not materially affect the welfare of the public.

However, it is not proper for a panel to do it on the open ended principle of ability to pay of the Haber report. It is not the prerogative of an Arbitration Panel to solve at any cost the employment problems for a city because its salary and benefit schedules fall short of the more affluent cities. This is a matter that falls entirely within the purview of the city officials and their electors. The right of self-government by the people should not, and cannot, be abrogated by a panel award.

A handwritten signature in dark ink, appearing to read "Joseph L. Caro". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

DISSENT OF ARNOLD J. SHIFMAN IN THE MATTER OF
NOVI POLICE OFFICERS ASSOCIATION AND THE CITY
OF NOVI, SUBMITTED TO COMPULSORY ARBITRATION

After having reviewed the proposed award in the above named case, I must in good conscience state my dissent.

My brief remarks will be directed to the area of wages as this constitutes the greatest injustice to the police officers of the City of Novi. The final wage increase granted though impressive in percentages still fails to provide Novi police officers with a salary comparable to that being received by police officers performing like duties in comparable communities. The reason for this being the poor salaries received by Novi police officers in past years, thus the increase granted is large in percentage but relatively small in actual dollar amount.

I sincerely felt it was the duty of this panel to consider all factors as stated in the Arbitration Act, Act no. 312, Public Acts 1969, State of Michigan, and then arrive at a fair compensation using those factors enumerated in the above Act, and this I feel the panel has failed. Granted, inroads have been made in eliminating the differences between the pay of Novi police officers and that received by other police departments, but the duty of the panel was to award wages that were comparable to those being received by other communities and not merely decrease the differences of pay between various departments.

It is not my intent to indicate that bad faith was exhibited by my fellow panel members, but rather differences in interpretation of the act existed.

I sincerely hope that in future negotiations between the city and the N.P.O.A. the city realizes the plight of its fine police department and makes every effort to correct any inequities of this award.

For the reasons stated above, I respectfully dissent.


ARNOLD J. SHIFMAN